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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 LOUIS V. SCHOOLER and FIRST
18 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
CORPORATION,

20 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**RECEIVER'S OPPOSITION TO
INVESTORS JOE M. ARDIZZONE,
DAVID R. SCHWARZ AND LOIS
SCHWARZ'S MOTION TO
INTERVENE**

Date: September 6, 2016
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

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1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"),
3 and its subsidiaries and the General Partnerships listed on Schedule 1 to the
4 Preliminary Injunction Order entered on March 13, 2013 (collectively,
5 "Receivership Entities"), submits this Opposition to Investors Joe M. Ardizzone,
6 David R. Schwarz and Lois Schwarz's Motion to Intervene ("Motion").

7 I. INTRODUCTION

8 Mr. Aguirre, having been engaged by six additional investors, Joseph
9 Ardizzone, David Schwarz,¹ Lois Schwarz, Dennis Frisman, Eric Gilbert, and Rick
10 Moore ("New Aguirre Investors"), now seeks to intervene on their behalf to
11 relitigate a series of issues the Court has previously considered on multiple
12 occasions. These issues include whether GPs should be released from the
13 receivership, whether investors have been afforded due process, whether the Court
14 has authority to approve sales of GP properties, whether the Court has authority to
15 pool assets of the Receivership Entities for distribution, and whether the Receiver
16 has provided sufficient accounting information. Not only is there no basis for such
17 intervention, but these same issues have been raised multiple times by Mr. Aguirre
18 on behalf of other investors ("Aguirre Investors") during the last several months and
19 have been fully addressed by the Court. Dkt. Nos. 1304, 1305.

20 Even the threshold issue of whether investors should be allowed to intervene
21 to relitigate these prior issues has been decided by the Court. Dkt. No. 1296. As the
22 Court held, the investors' request to intervene to relitigate issues previously
23 considered by the Court is "untimely and overbroad" and "would unduly delay this
24 action." *Id.* at pp. 7, 10. Through this Motion, the New Aguirre Investors intend to
25 seek reconsideration of numerous prior decisions of the Court, just as the Aguirre
26 Investors did in their motion to intervene. Like the Aguirre Investors, the New

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28 ¹ The Receivership Entities' records do not reflect any investor accounts under
David Schwarz's name, but do reflect two accounts under Lois Schwarz's name.

1 determine the appropriate relief in an equity receivership.
2 The basis for this broad deference to the district court's
3 supervisory role in equity receiverships arises out of the
4 fact that most receiverships involve multiple parties and
5 complex transactions. A district court's decision
6 concerning the supervision of an equitable receivership is
7 reviewed for abuse of discretion.

8 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*
9 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad
10 deference' to the court's supervisory role, and 'we generally uphold reasonable
11 procedures instituted by the district court that serve th[e] purpose' of orderly and
12 efficient administration of the receivership for the benefit of creditors.").
13 Accordingly, the Court has broad equitable powers and discretion in the
14 administration of the receivership estate.

15 **B. Legal Standard for Intervention**

16 The New Aguirre Investors move for intervention as of right. Motion, p. 13.
17 There are four requirements for intervention as of right: (1) timeliness, (2) an
18 interest relating to property or transaction that is the subject of the action,
19 (3) disposition of the action may impair or impede the movant's ability to protect the
20 interest, and (4) the movant's interest is not adequately represented by existing
21 parties. *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir.
22 1996). Failure to satisfy even one of these elements prevents the applicant from
23 intervening as of right. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d
24 1297, 1302 (9th Cir. 1997).
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1 In connection with the Aguirre Investors' prior motion to intervene, the Court
2 held that the second and third requirements above were satisfied,² but the motion
3 was "untimely and overbroad" and would "unduly delay the action" as to the same
4 grounds on which the New Aguirre Investors now seek to intervene. Dkt. No. 1296.
5 pp. 7, 10. The Court, however, found the motion to intervene was timely as to the
6 Aguirre Investors' request to oppose the Distribution Plan Motion and the existing
7 parties did not adequately represent the Aguirre Investors' interests in connection
8 with opposing the Distribution Plan Motion. *Id.* at pp. 7-8. Accordingly, the motion
9 to intervene was granted for the limited purpose of allowing the Aguirre Investors to
10 oppose the Distribution Plan Motion, but denied in all other respects. *Id.* at p. 11.

11 As the Aguirre Investors did, the New Aguirre Investors now seek to
12 intervene to challenge and vacate the Court's prior orders, relitigate a myriad of
13 issues, open up discovery and conduct an evidentiary hearing, have the Receiver
14 refile reports going back to the beginning of the case, and essentially step into the
15 role of the Court as overseer of the receivership. Allowing investor intervention for
16 these broad purposes would delay the administration of the receivership by many
17 months (possibly years) and cost the receivership estate (and therefore all investors)
18 tens of thousands, if not hundreds of thousands of dollars - all just so a small
19 minority of investors can relitigate decisions and actions of the Court. Indeed,
20 granting the motion would pave the way for every subsequent investor represented
21 by Mr. Aguirre to intervene and relitigate the Court's orders. As the Receiver has
22

23 ² The New Aguirre Investors contend the Receiver is barred by collateral estoppel
24 and law of the case from arguing the second, third, and fourth requirements of
25 intervention as of right are not met here. This is wrong. The right of any
26 investor or group of investors to intervene depends on, among other things, their
27 specific interests in the Receivership Entities. The Court has held that the
28 Aguirre Investors' prior motion to intervene, considering their specific interests
in the Receivership Entities, satisfied the second and third requirement, and
satisfied the first and fourth requirements as to the Distribution Plan Motion
only. The Aguirre Investors' interests, however, are not identical to those of the
six New Aguirre Investors, although the purposes for which they seek to
intervene are essentially the same. Therefore, the Receiver is not barred from
contesting any of the four requirements of intervention as of right.

1 explained in prior filings, investors have been provided with notices and
2 opportunities to be heard consistently throughout the receivership. *See* Dkt.
3 No. 1321, pp. 5-7. The Court has gone out of its way to consider whether it is
4 feasible to release GPs from the receivership and has directed the Receiver to submit
5 multiple proposals addressing that issue. Dkt. Nos. 808, 852, 1224, 1264. At this
6 point, the paramount importance of conserving receivership estate resources and
7 maximizing the recovery for investors must take priority over repetitive relitigation
8 of issues previously decided by the Court.

9 **C. Timeliness and Notice to Investors**

10 As noted above, the Motion is essentially a repetition of prior motions to
11 intervene by the Aguirre Investors. Dkt. Nos. 1229, 1230, 1258. The only variation
12 on the arguments previously made is the newly-fabricated mail notice scandal,
13 *i.e.* the contention that specific pleadings did not get mailed to the approximately
14 3,300 investors in this case. Based on this, the New Aguirre Investors argue their
15 motion to intervene is timely because they had no notice of the receivership until
16 now and therefore could not have sought to intervene or voice their views over the
17 past 46 months. In concocting the purported mail notice issue, however, the New
18 Aguirre Investors ignore the Court's orders and misconstrue the Court's Local Rules.
19 When one actually reviews the Court's orders, the Local Rules, and understands the
20 facts, the issue completely evaporates.

21 **1. Notice of the TRO and Receivership**

22 The New Aguirre Investors argue that notice of the hearing to appoint the
23 Receiver on a permanent basis was not provided to investors pursuant to Local
24 Rule 66.1.a.2. This ignores the actual facts and the Court's orders early in the case.
25 In reality, the timing and manner of notice to investors was an issue raised in the
26 first few days of the case. After hearing from both parties and considering the
27 arguments, the Court instructed the Receiver to provide notice to investors, which
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1 occurred by mail in October 2012, more than five months before the Receiver's
2 appointment was officially made permanent in March 2013.

3 This case was filed on September 4, 2012, and the Receiver was appointed on
4 a temporary basis on September 6, 2012. Dkt. Nos. 1, 10. Defendant Louis
5 Schooler immediately objected to notice being given to investors and argued that
6 such notice would irreparably harm Western's business. Dkt. No. 14. Accordingly,
7 the Court (the Hon. Larry Alan Burns presiding) initially decided to defer giving
8 notice to investors until it had heard from the Securities and Exchange Commission
9 on the issue. Dkt. No. 17 (staying the portion of the TRO that instructed the
10 Receiver to give notice to investors). The Court addressed the issue again a few
11 days later, but again elected to defer giving notice to investors. Dkt. No. 22
12 (declining to lift the stay on the investor notice provision in the TRO). On
13 October 5, 2012, having considered the issues more fully, the Court instructed the
14 Receiver to provide notice of his appointment to investors based "on a preliminary
15 finding that their interests are unregistered securities." Dkt. No. 44, p. 22, fn. 11.

16 At that time, the Receiver instructed Alice Jacobson and Beverly Shuler
17 ("Former Partnership Administrators") to mail a letter to each investor at their
18 address contained in the Receivership Entities' books and records. Declaration of
19 Thomas Hebrank filed herewith ("Hebrank Decl."), ¶ 3, Exh. A. The letter directed
20 investors to the website dedicated to the receivership, on which the TRO and related
21 pleadings and orders had been posted and were available to review, and instructed
22 them to visit the website for further updates about the receivership. *Id.* The letter
23 also provided contact information for the Receiver's office so investors could
24 contact the Receiver with questions. *Id.* Further, answers to frequently asked
25 questions were posted on the receivership website to assist investors in
26 understanding the basic aspects of a federal equity receivership. *Id.*

27 Therefore, within a month of the case being filed and the Receiver being
28 appointed on a temporary basis, written notice was mailed to all investors at the

1 specific direction of the Court and investors were provided with full access to
2 pleadings filed by the parties and the Court's orders. It was not until more than five
3 months later, on March 13, 2013, that the Court (the Hon. Gonzalo P. Curiel
4 presiding) entered the Preliminary Injunction Order, officially appointing the
5 Receiver on a permanent basis. Dkt. No. 174. Accordingly, investors received
6 ample notice and had the opportunity to be heard regarding the Receiver's
7 permanent appointment. Indeed, several dozen investor letters were filed with the
8 Court in February 2013, which shows investors received notice and had the
9 opportunity to be heard. Accordingly, the New Aguirre Investors' argument
10 regarding notice of the Receiver's permanent appointment has no merit.

11 2. Notice of the Distribution Plan Motion

12 Next, the New Aguirre Investors argue that notice of the hearing on the
13 Distribution Plan Motion (Dkt. No. 1181) was not provided to investors as required
14 by Local Rule 66.1.f. This argument fails for several reasons.

15 First, Local Rule 66.1.f. does not require notice of the hearing on the
16 Distribution Plan Motion. Local Rule 66.1.f. requires that 14 days' notice of
17 hearings on the following be provided to all interested parties:

- 18 1. Petitions for the payment of dividends to creditors;
- 19 2. Petitions for confirmation of sales of property;
- 20 3. Reports of the receiver;
- 21 4. Applications for fees of the receiver or any attorney,
22 accountant or investigator, the notice to state the services
 performed and the fee requested; and
- 23 5. Applications for discharge of the receiver.

24 Local Rule 66.1.f.

25 As the New Aguirre Investors acknowledge, the Court granted relief from
26 Local Rule 66.1.f. early in the case and ordered that posting sale motions, reports,
27 and fee applications to the receivership website was sufficient notice to interested
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1 parties due to the high costs of mailing all such notices to 3,300 investors.³ Dkt.
2 No. 170.

3 The New Aguirre Investors apparently assume the Distribution Plan Motion is
4 a "petition for the payment of dividends to creditors" under Local Rule 66.1.f.1.
5 The Distribution Plan Motion, however, did not petition the Court to pay any
6 amount to anyone. The motion simply asked the Court to approve a distribution
7 methodology (pooling and *pro rata* distribution). The Distribution Plan Motion and
8 Distribution Plan itself specifically provide that actual distributions to investors (or
9 "dividends to creditors" under the Local Rule 66.1.f.) will be made only after further
10 orders have been entered approving the allowed amounts of investor claims and
11 specifically authorizing distributions to be made. Dkt. No. 1181, Exh. E, pp. 3-4.
12 Therefore, Local Rule 66.1.f.1. does not apply.

13 Second, as the New Aguirre Investors admit, notice of the hearing on the
14 Distribution Plan Motion was emailed to investors on May 6, 2016, 14 days prior to
15 the May 20 hearing. Hebrank Decl., ¶ 4. Third, as discussed above, every investor
16 was mailed a letter at the beginning of the case directing them to the receivership
17 website and instructing them to check the website for updates about the
18 receivership. *Id.* at ¶ 3, Exh. A. The Distribution Plan Motion was posted to the
19 receivership website at the time it was filed and therefore was available for all
20 investors to review for approximately three and half months prior to the May 20,
21 2016 hearing. *Id.* at ¶ 4.

22 Finally, even if the New Aguirre Investors were somehow unaware of the
23 Distribution Plan Motion, they are represented by the same counsel as the Aguirre
24 Investors and their arguments in opposition to the Distribution Plan Motion are
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26 ³ Having expressly acknowledged the Court's order that notices of sale motions,
27 reports, and fee applications need not be mailed to investors, but instead posted
28 themselves and argue that hearing dates for sales should be vacated and interim
reports should be refiled because notices were not mailed to investors. Motion,
pp. 5, 17.

1 virtually identical to those of the Aguirre Investors. Therefore, the New Aguirre
2 Investors were adequately represented by the Aguirre Investors in opposing the
3 Distribution Plan Motion. The Court carefully considered the Aguirre Investors'
4 arguments at the May 20, 2016 hearing and in its 32-page decision. Dkt. No. 1304.

5 Accordingly, not only are the New Aguirre Investors wrong regarding the
6 application of Local Rule 66.1.f., but there is no credible claim investors did not
7 receive adequate notice of the Distribution Plan Motion or have the opportunity to
8 be heard. The numerous investor letters filed with the Court addressing the
9 Distribution Plan Motion confirm investors received notice and had the opportunity
10 to make their views known to the Court. The fact that every seat in the courtroom
11 gallery and jury box was filled during the May 20, 2016 hearing further confirms
12 investors received notice. Even if the New Aguirre Investors were somehow
13 unaware of the Distribution Plan Motion, the Aguirre Investors adequately
14 represented their interests in opposing the motion.

15 **D. The New Aguirre Investors' Participation in the Case**

16 The New Aguirre Investors' contention they received no notice of the
17 receivership and had no opportunity to be heard is further belied by the fact that, in
18 addition to the letter mailed to all investors in October 2012 (which directed them to
19 the receivership website) and the K-1 tax statements mailed to them every year
20 (which include a cover letter with the Receiver's name, business address, and
21 telephone number), each of them have had multiple communications to or from the
22 Receiver and/or the Court during the 46-month span of the receivership. These
23 communications are as follows:

- 24 • Mr. Ardizzone filed a letter with the Court on July 17, 2013. Dkt.
25 No. 309. The Court's July 22, 2014 Order was also emailed to
26 Mr. Ardizzone as directed in the final paragraph of that order. Dkt.
27 No. 629. Notice that information packets for the GPs in which
28 Mr. Ardizzone has interests had been posted to the receivership website

1 was mailed and emailed to Mr. Ardizzone in August 2015 per the
2 Court's May 12, 2015 order. Dkt. No. 1069.⁴

- 3 • The Court's July 22, 2014 Order was emailed to David and Lois
4 Schwarz as directed in the final paragraph of the order. Dkt. No. 629.
5 Notice that information packets for the GPs in which the Schwarzes
6 have interests had been posted to the receivership website was mailed
7 and emailed to them per the Court's May 12, 2015 order. Dkt.
8 No. 1069. The Schwarzes called and left a message at the Receiver's
9 office on August 20, 2015. Geno Rodriguez from the Receiver's office
10 returned their call and spoke to them. On August 21, 2015, the
11 Schwarzes emailed Mr. Rodriguez, confirming their request for account
12 statements and 2014 K-1 tax statements. Alica Herren from the
13 Receiver's office responded to the email and provided the requested
14 documents. Then, on April 1, 2016, in response to a voicemail
15 message, Mr. Rodriguez emailed Mrs. Schwarz about her 2015 K-1 tax
16 statement. Mrs. Schwarz responded to the email and Mr. Rodriguez
17 directed her to the receivership website and the information packet
18 concerning Checkered Flag Partners. Note, prior to the August 2015
19 email exchange, the Receivership Entities' records did not contain an
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21 ⁴ Mr. Ardizzone claims that "to the best of his knowledge" he received no emails
22 or letters from the Receiver. Dkt. No. 1348-4. Yet, he acknowledges receiving
23 K-1 tax statements from the Receiver's accountants by mail for the years 2012-
24 2015. The October 2012 letter and August 2015 notice would have been mailed
25 to Mr. Ardizzone at the same address as the K-1 tax statements, so there is no
26 reason to believe he did not receive those mailings. Mr. Ardizzone also filed a
27 letter with the Court as noted above, showing he received notice of the
28 receivership. It appears Mr. Ardizzone may have changed his email address at
some point without notifying the Receiver. However, investors have been
reminded repeatedly (in every interim report) to inform the Receiver if their
email address or physical address changes. *See e.g.* Dkt. No. 1319, p. 8. Indeed,
even without such instruction, investors who want to receive notices concerning
the receivership and their GP investments would naturally inform the Receiver if
and when their contact information changes. Finally, even if you were to Google
"Western Financial Planning Corporation," the receivership website would be in
the top five search results.

1 email address for the Schwarzes. Accordingly, the investor email list
2 was updated in August 2015 and the Schwarzes were included in
3 subsequent emails to investors, including the May 6, 2016 email
4 informing investors of the May 20, 2016 hearing on the Distribution
5 Plan Motion and an email sent on May 27, 2016 advising investors of
6 the Court's Order on the Distribution Plan Motion (Dkt. No. 1304).

- 7 • The Court's July 22, 2014 Order was emailed to Dennis Frisman as
8 directed in the final paragraph of the order. Dkt. No. 629. A notice
9 concerning the Receiver's Report and Recommendation Regarding
10 General Partnerships (Dkt. No. 852) and the January 23, 2015 hearing
11 was emailed to Mr. Frisman on November 24, 2014. A notice of the
12 time change of the January 23, 2014 hearing was emailed to
13 Mr. Frisman on January 16, 2015. A notice regarding the preparation
14 of investor K-1s was emailed to Mr. Frisman on February 2, 2015. A
15 notice advising investors of the Court's Order Keeping GPs in
16 Receivership (Dkt. No. 1003) was emailed to Mr. Frisman on March 9,
17 2015. Notice that information packets for the GPs in which
18 Mr. Frisman has interests had been posted to the receivership website
19 was mailed and emailed to Mr. Frisman per the Court's May 12, 2015
20 order. Dkt. No. 1069. Mr. Frisman also received multiple email
21 notices between October 2015 and March 2016 concerning letters of
22 intent for properties in which his GPs have interests. Finally, the
23 May 6, 2016 and May 27, 2016 notices referenced above were emailed
24 to Mr. Frisman.
- 25 • Rick Moore filed a letter with the Court on July 18, 2013. Dkt.
26 No. 323. The Court's July 22, 2014 Order was emailed to Mr. Moore
27 as directed in the final paragraph of the order. Dkt. No. 629. A notice
28 concerning the Receiver's Report and Recommendation Regarding

1 General Partnerships (Dkt. No. 852) and the January 23, 2015 hearing
2 was emailed to Mr. Moore on November 24, 2014. A notice of the
3 time change of the January 23, 2014 hearing was emailed to Mr. Moore
4 on January 16, 2015. A notice regarding the preparation of investor
5 K-1s was emailed to Mr. Moore on February 2, 2015. A notice
6 advising investors of the Court's Order Keeping GPs in Receivership
7 (Dkt. No. 1003) was emailed to Mr. Moore on March 9, 2015. Notice
8 that information packets for the GPs in which Mr. Moore has interests
9 had been posted to the receivership website was mailed and emailed to
10 Mr. Moore per the Court's May 12, 2015 order. Dkt. No. 1069.

11 Mr. Moore also contacted the Receiver's office in April 2015 regarding
12 his K-1 tax statement. Mr. Moore also received an email notice in
13 August 2015 concerning a letter of intent for the Las Vegas 2 property,
14 in which his GP (Rainbow Partners) has an interest. Finally, the
15 May 6, 2016 and May 27, 2016 notices referenced above were emailed
16 to Mr. Moore.

- 17 • The Court's July 22, 2014 Order was emailed to Eric Gilbert as directed
18 in the final paragraph of the order. Dkt. No. 629. A notice concerning
19 the Receiver's Report and Recommendation Regarding General
20 Partnerships (Dkt. No. 852) and the January 23, 2015 hearing was
21 emailed to Mr. Gilbert on November 24, 2014. A notice of the time
22 change of the January 23, 2014 hearing was emailed to Mr. Gilbert on
23 January 16, 2015. A notice regarding the preparation of investor K-1s
24 was emailed to Mr. Gilbert on February 2, 2015. A notice advising
25 investors of the Court's Order Keeping GPs in Receivership (Dkt.
26 No. 1003) was emailed to Mr. Gilbert on March 9, 2015. Notice that
27 information packets for the GPs in which Mr. Gilbert has interests had
28 been posted to the receivership website was mailed and emailed to

1 Mr. Gilbert per the Court's May 12, 2015 order. Dkt. No. 1069.
2 Mr. Gilbert also contacted the Receiver's office in February 2015
3 regarding his K-1 tax statement. Finally, the May 6, 2016 and May 27,
4 2016 notices referenced above were emailed to Mr. Gilbert.
5 Hebrank Decl., ¶ 5.

6 These communications to and from the Receiver and the Court, along with the
7 hundreds of other letters and Court filings by investors, show investors received
8 notice and have been able to voice their views on issues relating to the receivership
9 throughout this case.

10 **E. Other Issues Raised in the Motion**

11 1. Accusations of Impropriety

12 The New Aguirre Investors simply rehash accusations made by Schooler
13 regarding improper communications between the Receiver and the Commission.
14 The Court carefully considered these allegations when they were made and
15 considered them again recently, stating that it "found no merit in those allegations."
16 Dkt. Nos. 1003, 1304. This has no bearing on the Motion and is simply a
17 transparent attack on the Receiver.

18 2. Access to Financial Records

19 The New Aguirre Investors argue they have been denied access to books and
20 records of the GPs in which they have interests. The New Aguirre Investors,
21 however, do not show and cannot show a single instance in which they have
22 requested financial information from the Receiver, let alone an instance in which
23 they have been denied such information. Moreover, the Receiver has provided
24 thousands of pages of financial statements and bank statements for each and every
25 GP to Mr. Aguirre pursuant to his requests on behalf of the Aguirre Investors. The
26 Receiver has filed examples of these documents in the past, when Mr. Aguirre has
27 falsely claimed the Receiver has not provided financial records. Dkt. No. 1292-1,
28 Exh. B. Mr. Aguirre can share those records with the New Aguirre Investors as to

1 the GPs in which they have interests. Accordingly, the New Aguirre Investors'
2 claim that they have been denied access to financial information has no merit.

3 **III. CONCLUSION**

4 As the Receiver noted in his Distribution Plan Motion, in federal equity
5 receiverships such as this where the assets of the receivership estate are insufficient
6 to pay investor claims in full, there will always be some investors who argue they
7 should receive more than other investors because they were in entities or
8 investments that happened to be better off than other entities or investments. As to
9 the Distribution Plan Motion, the Court received extensive briefing from the
10 Receiver, the Commission, the Aguirre Investors, and the Dillon Investors, held a
11 hearing at which Mr. Aguirre and Mr. Dillon presented extensive argument,
12 carefully considered the issues, and issued a 32-page decision.

13 The fact that the Aguirre Investors and New Aguirre Investors disagree with
14 the Court's decision and would prefer not to share with those in other GPs is not a
15 basis for a small minority of investors to intervene, relitigate the Court's decisions,
16 delay the administration of the case, and further consume the limited resources of
17 the receivership estate. The New Aguirre Investors have not and cannot meet the
18 requirements for intervention as of right. For these reasons, the Motion should be
19 denied.

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Dated: August 23, 2016

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MALLORY & NATSIS LLP

By: /s/ Edward Fates

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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

17 LOUIS V. SCHOOLER and FIRST
18 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
19 FINANCIAL PLANNING
CORPORATION,

20 Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF HIS
OPPOSITION TO INVESTORS
JOE M. ARDIZZONE, DAVID R.
SCHWARZ AND LOIS SCHWARZ'S
MOTION TO INTERVENE**

Date: September 6, 2016

Time: 1:30 p.m.

Ctrm.: 2D

Judge: Hon. Gonzalo P. Curiel

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1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), and its
4 subsidiaries and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").

6 2. I make this declaration in support of my opposition to Investors Joe M.
7 Ardizzone, David R. Schwarz and Lois Schwarz's Motion to Intervene ("Motion").
8 I have personal knowledge of the facts stated herein, and if called upon to do so, I
9 could and would personally and competently testify to them.

10 3. On or about October 5, 2012, after the Court entered its order
11 instructing me to provide notice of my appointment to investors, I instructed Alice
12 Jacobson and Beverly Shuler ("Former Partnership Administrators") to mail a letter
13 to each investor at their address contained in the Receivership Entities' books and
14 records. The letter directed investors to the website dedicated to the receivership, on
15 which the TRO and related pleadings and orders had been posted and were available
16 to review, and instructed them to visit the website for further updates about the
17 receivership. The letter also provided contact information for my office so investors
18 could contact me with questions. A true and correct copy of the letter is attached
19 hereto as Exhibit A. Further, answers to frequently asked questions were posted on
20 the receivership website to assist investors in understanding the basic aspects of a
21 federal equity receivership.

22 4. The Distribution Plan Motion was posted to the receivership website at
23 the time it was filed and therefore was available for all investors to review for
24 approximately three and half months prior to the May 20, 2016 hearing. On May 6,
25 2016, notice of the hearing on the Distribution Plan Motion was emailed to
26 investors, 14 days prior to the May 20 hearing.

27 5. In addition to the letter mailed to all investors in October 2012 (which
28 directed them to the receivership website) and the K-1 tax statements mailed to them

1 every year (which include a cover letter with my name, business address, and
2 telephone number), each of the New Aguirre Investors have had multiple
3 communications to or from my office and/or the Court during the 46-month span of
4 the receivership. These communications are as follows:

5 • Mr. Ardizzone filed a letter with the Court on July 17, 2013. Dkt.
6 No. 309. The Court's July 22, 2014 Order was emailed to Mr. Ardizzone as directed
7 in the final paragraph of that order. Dkt. No. 629. Notice that information packets
8 for the GPs in which Mr. Ardizzone has interests had been posted to receivership
9 website was mailed and emailed to Mr. Ardizzone in August 2015 per the Court's
10 May 12, 2015 order. Dkt. No. 1069.

11 • The Court's July 22, 2014 Order was emailed to David and Lois
12 Schwarz as directed in the final paragraph of the order. Dkt. No. 629. Notice that
13 information packets for the GPs in which the Schwarzes have interests had been
14 posted to receivership website was mailed and emailed to them per the Court's
15 May 12, 2015 order. Dkt. No. 1069. The Schwarzes called and left a message at
16 my office on August 20, 2015. Geno Rodriguez from my office returned their call
17 and spoke to them. On August 21, 2015, the Schwarzes emailed Mr. Rodriguez,
18 confirming their request for account statements and 2014 K-1 tax statements. Alica
19 Herren from my office responded to the email and provided the requested
20 documents. Then, on April 1, 2016, in response to a voicemail message,
21 Mr. Rodriguez emailed Mrs. Schwarz about her 2015 K-1 tax statement.
22 Mrs. Schwarz responded to the email and Mr. Rodriguez directed her to the
23 receivership website and the information packet concerning Checkered Flag
24 Partners. Note, prior to the August 2015 email exchange, the Receivership Entities'
25 records did not contain an email address for the Schwarzes. Accordingly, the
26 investor email list was updated in August 2015 and the Schwarzes were included in
27 subsequent emails to investors, including the May 6, 2016 email informing investors
28 of the May 20, 2016 hearing on the Distribution Plan Motion and an email sent on

1 May 27, 2016 advising investors of the Court's Order on the Distribution Plan
2 Motion (Dkt. No. 1304).

3 • The Court's July 22, 2014 Order was emailed to Dennis Frisman as
4 directed in the final paragraph of the order. Dkt. No. 629. A notice concerning the
5 Receiver's Report and Recommendation Regarding General Partnerships (Dkt.
6 No. 852) and the January 23, 2015 hearing was emailed to Mr. Frisman on
7 November 24, 2014. A notice of the time change of the January 23, 2014 hearing
8 was emailed to Mr. Frisman on January 16, 2015. A notice regarding the
9 preparation of investor K-1s was emailed to Mr. Frisman on February 2, 2015. A
10 notice advising investors of the Court's Order Keeping GPs in Receivership (Dkt.
11 No. 1003) was emailed to Mr. Frisman on March 9, 2015. Notice that information
12 packets for the GPs in which Mr. Frisman has interests had been posted to the
13 receivership website was mailed and emailed to Mr. Frisman per the Court's
14 May 12, 2015 order. Dkt. No. 1069. Mr. Frisman also received multiple email
15 notices between October 2015 and March 2016 concerning letters of intent for
16 properties in which his GPs have interests. Finally, the May 6, 2016 and May 27,
17 2016 notices referenced above were emailed to Mr. Frisman.

18 • Rick Moore filed a letter with the Court on July 18, 2013. Dkt.
19 No. 323. The Court's July 22, 2014 Order was emailed to Mr. Moore as directed in
20 the final paragraph of the order. Dkt. No. 629. A notice concerning the Receiver's
21 Report and Recommendation Regarding General Partnerships (Dkt. No. 852) and
22 the January 23, 2015 hearing was emailed to Mr. Moore on November 24, 2014. A
23 notice of the time change of the January 23, 2014 hearing was emailed to Mr. Moore
24 on January 16, 2015. A notice regarding the preparation of investor K-1s was
25 emailed to Mr. Moore on February 2, 2015. A notice advising investors of the
26 Court's Order Keeping GPs in Receivership (Dkt. No. 1003) was emailed to
27 Mr. Moore on March 9, 2015. Notice that information packets for the GPs in which
28 Mr. Moore has interests had been posted to the receivership website was mailed and

1 emailed to Mr. Moore per the Court's May 12, 2015 order. Dkt. No. 1069.
2 Mr. Moore also contacted my office in April 2015 regarding his K-1 tax statement.
3 Mr. Moore also received an email notice in August 2015 concerning a letter of
4 intent for the Las Vegas 2 property, in which his GP (Rainbow Partners) has an
5 interest. Finally, the May 6, 2016 and May 27, 2016 notices referenced above were
6 emailed to Mr. Moore.

7 • The Court's July 22, 2014 Order was emailed to Eric Gilbert as directed
8 in the final paragraph of the order. Dkt. No. 629. A notice concerning the
9 Receiver's Report and Recommendation Regarding General Partnerships (Dkt.
10 No. 852) and the January 23, 2015 hearing was emailed to Mr. Gilbert on
11 November 24, 2014. A notice of the time change of the January 23, 2014 hearing
12 was emailed to Mr. Gilbert on January 16, 2015. A notice regarding the preparation
13 of investor K-1s was emailed to Mr. Gilbert on February 2, 2015. A notice advising
14 investors of the Court's Order Keeping GPs in Receivership (Dkt. No. 1003) was
15 emailed to Mr. Gilbert on March 9, 2015. Notice that information packets for the
16 GPs in which Mr. Gilbert has interests had been posted to the receivership website
17 was mailed and emailed to Mr. Gilbert per the Court's May 12, 2015 order. Dkt.
18 No. 1069. Mr. Gilbert also contacted my office in February 2015 regarding his K-1
19 tax statement. Finally, the May 6, 2016 and May 27, 2016 notices referenced above
20 were emailed to Mr. Gilbert.

21 I declare under penalty of perjury under the laws of the State of California
22 that the foregoing is true and correct.

23 Executed this 23rd day of August, 2016, at San Diego, California.

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25 _____
26 THOMAS C. HEBRANK

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EXHIBIT INDEX

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EXHIBIT A

EXHIBIT A



October 12, 2012

Investors/General Partners:

This letter is to inform you that, pursuant to orders of the United States District Court for the Southern District of California in an action filed by the Securities and Exchange Commission, I have been appointed receiver over the General Partnerships set up by Western Financial Planning Corporation ("Western"). My appointment by the District Court is based on its preliminary finding that the General Partnerships interests sold by Western are unregistered securities. The records of Western and the General Partnerships indicate that you are an investor/general partner in one or more such General Partnerships.

At this time, sales of General Partnership interests have been suspended. No distributions from the General Partnerships will be made until such distributions are authorized by the District Court. The District Court has instructed me to conduct an investigation and accounting, and to provide reports to the District Court on my activities and findings.

As additional information is obtained and developments in the case occur, I will update my website at www.ethreadvisors.com (please refer to the "SEC Case Docs" tab at the top). My reports will be posted on the website when they are filed with the District Court.

In order to reduce the volume of calls and e-mails, and to minimize expenses of the receivership, please check the website for periodic updates on the case. I will respond to calls and e-mails as time permits, but relevant information on the case will be posted on the website for your information.

Sincerely,

A handwritten signature in blue ink that reads "Thomas C Hebrank".

Thomas C. Hebrank, CPA, CIRA
Receiver